IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/06/2003

CORAM

THE HON'BLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No. 5544 OF 1995

K.Saminathan ..... Petitioner.

-Vs-

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. Pudukotai Central Co-op.
Bank Ltd., represented by
Special Officer,
Pudukottai. ..... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

For petitioner : Mr. K.V.Ananthakrishnan.

For 2nd respondent : Mr.Vijay Narayan.

:ORDER
The writ petitioner while working as a Clerk in the second respondent/bank was served with a charge memo dated 16.8.1983, alleging that he had been indulging in abusive and false propoganda against the management and had been spreading false rumours against the management and that his activities had resulted in the degradation of the reputation of the Bank. The petitioner furnished a reply on 25.8.1983 refuting allegations. Another charge memo dated 3.12.1983 was also served on the petitioner alleging that while he was working in Karambakurichi branch, he had made several wrong entries in the accounts of the branch and had thereby caused loss to the Bank.

2. According to the Bank, a domestic enquiry was conducted into the charges after due notice to the petitioner. But he was refusing to participate in the enquiry and therefore, an ex parte enquiry was conducted. Ultimately, by order dated 24.3.1984 he was dismissed from service. An appeal was filed and the appeal was also dismissed by the Appellate Authority. He raised an Industrial Dispute before the Labour Court, Madurai, in I.D.No.303 of 1986 and subsequently transferred to the Labour Court, Tiruchy, as I.D.No.8

of 1992. While dealing with the issue as to whether the domestic enquiry had been properly and validly conducted, by order dated 31.5.1991, the Labour Court held that the domestic enquiry had not been properly conducted. The management was directed to adduce proper evidence before the Labour Court and on a full-fledged enquiry and taking into account the evidence let in by both sides, the Labour Court concluded that the order of dismissal was valid. Hence, the above writ petition for the issue of a writ of certiorarified mandamus to quash the award and to direct reinstatement of the petitioner.

3. Mr.K.V.Ananthakrishnan, learned counsel for the employee contended that the entire action against the writ petitioner was due to vindictive and mala fide reasons arising out of the circumstance that the petitioner was the General Secretary of the employees' Union of the Bank which was affiliated to A.I.B.E.A. As an active officebearer he was espousing the cause of the Bank on several occasions in effective manner and dealing with only the labour policies and actions of the Bank. In the said context, he has been sending representations to the management and raising demands on behalf of the Union. The management finding the petitioner uncompromising in his actions, had taken a very vindictive attitude against him. The very nature of the first charge against the petitioner would expose the real motives of the management namely, that he had defamed or brought down the image of the Bank by sending a Letter dated 6.7.1983. All that he was doing was to point out the misdeeds of the management in the capacity of a General Secretary of the Union. He was commenting only about the commissions and omissions of the management as regards certain issues pertaining to the labour and not personally against any Officer of the Bank. The sequence of events would clearly disclose mala fides on the part of the Bank. Being irked by the Trade Union activities of the petitioner, the Special Officer had made defamatory and abusive remarks against the petitioner in his personal file in an unjustified manner. The petitioner had caused the issue of a lawyer's notice on 5.8.1993 calling upon the Special Officer to withdraw the said remarks. By a reply dated 16.8.1983, the Special Officer, through his Advocate, had taken a very curious stand that he does not remember to have written in the file in the manner stated by the petitioner and that the connected file was missing and at any rate there was no malice as alleged. This was immediately followed by the first charge memo on the same date viz. 16.8.1983 and the petitioner pointed out in his reply that the comments made by him about the functioning of the Bank was only on behalf of the Union pertaining to the interest of the Labour. The management was fully convinced that they have no case to substantiate the first charge and therefore propped up the second charge after fishing out the past account books, making much out of the small errors and discrepancies for which the petitioner alone cannot be held responsible. The entire episode betrays absolute mala fides.

4. Learned counsel further contends that the first charge cannot at all be treated as a misconduct. A perusal of the impugned letter dated 6.7.1983 shows that the injustice suffered by the workers on various issues had been high lighted and that the members belonging to their Union alone were being victimised and that the management was indulging in partiality by treating the workers belonging to the rival Union in a preferential manner. The letter was nothing more than an expression of the

demands of the workers belonging to the Union in furtherance of their Constitutional rights and not at all defamatory against the administration or any individual superior officer. Learned counsel relies on the judgment of the Supreme Court in LAXMI DEVI SUGAR MILLS LIMITED. v. NAND KISHORE SINGH (Vol. XI F.J.R., 202). The Supreme Court held that exhorting workmen to pass a resolution demanding dismissal of the General Manager, was not subversive of discipline.

5. Learned counsel further contends that the misconduct is not one of the enumerated categories of misconduct and hence cannot be made a subject matter of any charge or disciplinary proceedings. Reference is made to the judgment of the Supreme Court in RASIKLAL VAGHAJIBHAI PATEL v. AHMEDABAD MUNICIPAL CORPORATION & ANR. (1985 (I) L.L.J., 5 27).

6. On behalf of the petitioner, it is further contended that the second charge relating to maintenance of accounts is a flimsy charge and has been framed only for penalising the petitioner unfairly. On the same charges action had been taken against the Manager also (P. Rangasamy) and he has been let-off with a minor penalty of stoppage of increment for a period of one year. In fact according to the Service Regulations allocating duties and responsibilities, it is only the Branch Manager who is in charge of the Accounts and he was solely responsible for the proper maintenance of the accounts. When the Manager himself had been let off, there was no justification to penalise a subordinate staff with dismissal. This was nothing but mala fide and discriminatory. In support of his contention that such discriminatory action was illegal, reliance is placed on the following judgments:-
(i) M.RAJAMANICKAM v. BHEL. & ANR. (1997 (II) M.L.J., 408).
(ii) KARUPPANNAN v. T.N. WATER SUPPLY & DRAINAGE BOARD (1992 (I) M.L.J., 303).

(iii) K.KANNAN v. CENTRAL BOARD OF SECONDARY EDUCATION (1992 (T.N.L.J., 158).

7. Learned counsel also contends that this being a case where the disciplinary enquiry was found invalid, the employee would be entitled to arrears of salary and in support of the said contention, reliance is placed on the following judgments:-

(i) GUJARAT STEEL TUBES LTD. v. G.S.T. MAZDOOR SABHA (1980 (I) L.L.J., 137).
(ii) VISWESHWARIAH IRON AND STEEL LTD. v. ABDUL GANI (1997 (8) S.C.C., 713).

8. It is further contended that the award of the Labour Court was liable to be set aside on the ground that the Labour Court had not at all considered proportionality in the context of Section 11-A of the Industrial Disputes Act. Non -consideration of the issues arising under Section 11-A would vitiate the entire award. Reliance is placed on the following judgments:-

(i) V.B.DAMANIA v. STANDARD BATTERIES LTD. & ORS.
(1994 (II) L.L.J.(Suppl), 870).
(ii) ENGINE VALVES LTD. v. LABOUR COURT, MADRAS & ANOTHER (1991 (I) L.L.J., 372).
(iii) MANAGEMENT OF ESSORPE (P) LTD. v. v. PRESIDING OFFICER, LABOUR COURT, & ANR. (1998 (II) L.L.J., 1204).

9. Learned counsel was also critical about the role played by Mr.M.Anaiyappan, who was Legal Adviser of the Company, Enquiry Officer and finally as Counsel for the management before the Labour Court. Such biased approach was glaring and the entire manner in which the enquiry was conducted would render the enquiry proceedings null and void. Learned counsel also raised several other allegations relating to the validity of the domestic enquiry inclusive of whether proper records were supplied to the petitioner or not and whether the Enquiry Officer was biased or competent to have functioned as enquiry officer. The said issues need not be gone into in this writ petition considering that before the Labour Court, management had adduced evidence and all opportunities had been given to the petitioner to defend himself.

10. Per contra, Mr. Vijay Narayan, learned counsel for the second respondent, contends that there was no question of any victimisation or bias against the petitioner. The petitioner was indulging in actions detrimental to the interests of the Bank as well as the labour force and the letter issued by him was in his individual capacity and not on behalf of the Union as contended. The petitioner by merely using the letter-head or signing as the General Secretary of the Union cannot wriggle out of his acts of indiscipline. Though there is nothing wrong in espousing the cause of the Labour Union, expressions which he had used in the letter are very vituperative and amounts to glaring indiscipline and insubordination. As regards the second charge, learned counsel contended that the Labour Court had considered in detail the evidence tendered by both parties and had found the petitioner guilty of serious charges of manipulation of accounts resulting in loss to the Bank. The mistakes were not clerical and could not be only due to oversight considering the number of instances within a short period. Learned counsel also disagreed with the contention that the Branch where the petitioner was working, was a very busy branch and mistakes could have occurred due to pressure of work. Learned counsel also referred to decisions in the context of whether any proof of actual loss was necessary to establish the charges of misconduct and that in this case the loss due to the wrong entries made by the petitioner was obvious and proved and even otherwise no specific proof of loss is necessary. As long as the conduct of the employee amounts to negligence, misappropriation, mis-accounting etc., the damage to the establishment was self-eviident and it was not possible to keep such an employee in the service of the Bank. In STATE BANK OF INDIA v. T.J.PAUL

(1999 (II) L.L.J., 514), the Supreme Court held that even likelihood of loss coupled with negligence would amount to gross misconduct and that proof of actual loss was not necessary.

11. As regards the need to comply with Section 11-A, learned

counsel contends that the Labour Court had taken into account, the gravity of the charges, namely indisciplined behaviour, by using unparliamentary and improper words, damaging the image of the Bank and also guilty of manipulation of accounts by making wrong entries and thus having caused loss to the Bank. The proved charges were grave enough on each count and hence there was no need for specific consideration of the past conduct. The past conduct requires to be considered only when the nature of the charge is such that it may not invite extreme punishment of dismissal. It is open to this Court by itself to assess the nature of proved misconduct and independently assess as to whether an order of dismissal was disproportionate. It will not be in the interest of the Bank to employ a person like the petitioner who would make wrong entries and thus lead to distrust in the mind of the customers of the Bank and hence the order of dismissal was perfectly valid. Mr.Vijay Narayan also referred to the some of the judgments on the issue of "relation back" of the punishment in view of the Tribunal having found that the enquiry had not bee n properly conducted. He would contend that the punishment once approved by the Labour Court will take effect from the date of original order of dismissal.

12. I have considered the submissions of both sides. As I had already stated though learned counsel for the petitioner had raised several issues pertaining to the validity of the domestic enquiry, bias of the Enquiry Officer and other technical defects which would allegedly violate the enquiry proceedings etc., it is not necessary to deal with those issues considering that evidence has been tendered by the management as well as by the employee and both of them have been provided with adequate opportunities. Therefore, there is no necessity to go into the points raised by the petitioner in the context of the validity of the enquiry.

13. On the issue whether the letter issued by the petitioner would amount to derogatory and defamatory allegations against the Bank, not being a specifically enumerated misconduct whether such charge could have been framed against the employee, I am inclined to hold that framing of the said charge cannot be held to be invalid. Enumeration of misconduct cannot be exhaustive. The nature of the first charge cannot be said to be beyond the scope of the disciplinary action by the employer. Any conduct which amounts to causing damage to the reputation and goodwill of the management is certainly an actionable conduct which would fall under the category of "unbecoming conduct". Therefore, I am unable to sustain the contention of learned counsel for the petitioner.

14. However, on merits I am inclined to hold that the impugned letter signed by the petitioner cannot justify the charges framed against him. I have perused the letter dated 6.7.1983 signed by the petitioner. The letter is nothing more than a charter of demands and expression of the grievances by the employees. It is only addressed to the Management on behalf of the Union and the letter merely lists the charges and the allegations against the management of partial treatment between members belonging to the petitioner Union and the rival Union and also other issues which purely relate to service conditions. On the basis of the details given thereunder, the petitioner had alleged that the management was indulging in unfair labour practice. I fail to understand as to how the said letter issued

on behalf of the Union could be termed as defamatory and the General-Secretary alone should have been singled out for disciplinary action. If actions are to be initiated on such representation, then there is no safety for the functioning of any Union. Expression of grievances is part of the fundamental right of the Labour Force and I do not find any vituperative or defamatory expressions or allegations either against the Bank or against any individual officer of the Bank. The allegations pertain to issues like partial treatment of employees belonging to different Unions, the manner in which leave under several heads were granted or refused. The Union had also criticised the terms of the Circular issued by the Management dated 26.8.1983. They have also expressed their views against the practice of the management appointing their own Advocate as an Enquiry Officer and the mis-use of the vehicles belonging to the Bank. It is also further alleged that compassionate appointments were not given in accordance with priority and the Rules governing compassionate appointments. I do not find any allegation which can be termed as defamatory or scandalous . More over, what has to be borne in mind is that before the said allegations are to be held as defamatory, the truth or otherwise of the allegations have to be tested. If suppose allegations have sufficient basis and if the petitioner can demonstrate that the allegations are true, then the letter of the petitioner will not amount to an actionable misconduct. No Court or any other authority had gone into the issue as to whether the allegations put forth in the letter are true or not. It cannot be disputed that the employees have the right to raise and express their grievances and if the management is indulging in any unfair labour practice, the labour force is bound to say so. Such expressions cannot be held to be defamatory unless shown to be false or frivolous. It is not the case of the management that any competent authority had dealt with the issues raised in the letter and found that the allegations were frivolous. Nor has any evidence been let in by the management to prove the allegations as false much less has the Labour Court gone into the said issues. The charge appears to be only a counter-blast to the legal notice issued by the petitioner in protest against the remarks which are alleged to have been made against him in his personal records by the second respondent. Reaction of the second respondent is both curious and surprising namely, that he does not remember to have written such remarks and also that the said file was missing. In his reply, the Special Officer also admits that there was enmity between the two. The reply is dated 16.8.1983 and on the same day the first charge is framed. Therefore, I am inclined to hold that the first charge does not have a proper basis and the Labour Court had not considered either the nature of the charge, the actual contents of the letter or the background in which the first charge memo had been issued. There can be no comparison with the facts of the case which arose for consideration in M.H.DEVANDRAPPA v. KARNATAKA STATE SMALL INDUSTRIES DEVELOPMENT CORPORATION (1998 (3) S.C.C., 732) and relied upon by Mr.Vijay Narayan. That was a case where the delinquent had addressed a letter to the Governor making serious allegations of corruption and nepotism against the management and had also issued a Press statement welcoming the dismissal of the Chairman of the respondent/Corporation, from the Presidentship of Bangalore City District Congress Committee. In the said background the activities of the delinquent were found to be violative of the Service Regulations and also subversive of discipline and making statements on political issues. In this case, the appellant had sent the letter dated

6.7.1983 only to the Special Officer himself referring to the service conditions of the workers. In fact, in the said judgment itself in paragraph No.17, the Supreme Court had observed that it cannot be held that any legitimate action discreetly and properly taken by a Government Servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation, would also be barred. Therefore, I am unable to sustain the said charge and I am inclined to set aside the finding of the Labour Court holding the charge as proved.

15. As regards the second charge, it is true that the charges are serious in nature. The nature of the activity of the Bank demands utmost care and integrity in the maintenance of accounts and making entries in the Account Books. Not only the Bank is put to loss, but also the customers will lose faith, thus affecting the goodwill of the Bank. In this context, M.W.1 has given detailed evidence as regards 11 instances of wrong entries. Necessary records have also been filed in evidence. The Labour Court had referred to them in detail and as regards conflicting entries in the Account Books and Ledger, in paragraph No.11 of the Award the Labour Court had referred to the discrepancies and had concluded that the petitioner had caused loss to the Bank. The discrepancies are not just one or two which could be treated as excusable but eleven instances within a short period of nine months which reflect very badly on the delinquent . It is not necessary to extract the said discrepancies which have been detailed in paragraph No.11 of the award. I find no reason to disagree with the conclusion of the Labour Court that the charge was proved. Even in the course of the arguments there was no attempt to explain 11 instances of discrepancies referred to in the award. The only endeavour was to show that in terms of the Service Regulation - allocation of work, it was the Branch Manager who was solely responsible for the proper maintenance of accounts and the respondents have acted in a discriminatory manner by letting of P.Rangasamy, Manager, with a minor punishment.

16. On the issue of discrimination, it is true that in awarding punishment, there should not be any discrimination between two similarly placed delinquents. But in this case, the over all responsibility fixed on the Branch Manager in terms of allocation of work, cannot be equated to the role of the petitioner who is the actual author of the discrepancies in the entries. The responsibility fixed on the Manager in the Regulations is only to emphasis the overall control and the general responsibility of the Branch Manager for all the activities of the Branch under his control as the Chief Officer of the Branch. His responsibility is vicarious in nature and in such cases and cannot be compared to that of an individual employee who is directly involved and guilty of the mis-accounting. The fact that the petitioner is the author of the faulty entries, is not challenged before me. Therefore, the petitioner cannot be heard to contend that his role has to be ignored and that the Manager should be held equally responsible. It may not be humanly possible for the Branch Manager to go through all the day-to-day entries in the Account-Books and therefore, the responsibility fixed on him cannot be compared with the nature of the commissions and omissions of the petitioner who is directly and individually responsible and answerable.

17. The attempt on the part of the petitioner to explain away the charge by stating that there was too much of pressure and overload of work in the Branch resulting in the mistakes in the accounts and that the petitioner has not made any illegal gain, cannot also be sustained. The said claim had been duly considered by the Labour Court and a finding has been rendered to the effect that the Branch was only a small Branch in a rural area with less than 10 items of work per day and that the proved instances cannot be taken as routine mistakes or omissions. The Labour Court also took note of the fact that the said defence had been taken only in the course of the evidence and not in the claim petition.

18. I am therefore, inclined to hold that the second charge stands clearly proved. The nature of the charge is also undoubtedly serious which should result in extreme punishment.

19. Now coming to the quantum of punishment, it is true that the Labour Court has not complied with the requirements under Section 11-A of the Industrial Disputes Act and there is absolutely no discussion or reasoning relating to the past conduct of the delinquent or quantum of punishment. But at the same time, it cannot be disputed that the High Court under Article 226 of the Constitution of India, can also go into the issue independently and consider awarding proper punishment, instead of protracting the proceedings further by remitting the enquiry to the Labour Court only for the purpose fixing proper punishment.

20. Mr. Vijay Narayan contends that the nature of the proved charge itself was sufficient to remove the petitioner from service of the Bank in the interest of proper functioning of the Bank. Such employees who would cause loss to the Bank cannot be retained in service. Relying on the judgment of the Supreme Court in STATE BANK OF INDIA v. T.J.PAUL (1999 (II) L.L.J., 514), cited above, learned counsel contends that there need not even be any proof of loss to the Bank. Even so in the evidence the respondents have clearly established not only negligence which has the likelihood of causing loss, but also actual loss to the Bank.

21. I have considered the submissions of both sides with reference to awarding proper punishment. It is true that the proof of the second charge alone is sufficient to impose penalty of dismissal from service having regard to the nature of delinquency. But yet I am inclined to take note of the circumstances under which action was initiated against the petitioner and the second charge came to be formulated against the petitioner and some of the actions of the respondents themselves which disclose a negative attitude towards the petitioner in view of his action against the management and in particular against the Special Officer who is alleged to have made derogatory remarks in the personal file of the petitioner. This had immediately sparked off an action by the management in framing the first charge. The second charge immediately followed thereafter which is undoubtedly due to the hostile attitude adopted against the petitioner. I have already held that there was no substance in the first charge and I have also set aside the same. The Disciplinary Authority as well as the Labour Court would have certainly given due weight to the said charge also while

arriving at the quantum of punishment. I am also inclined to take note of some of the unusual steps taken by the management against the petitioner such as appointing the Legal Adviser of the Company as Enquiry Officer and the same person acting as the Advocate for the Management before the Labour Court. These facts expose certain amount of unfairness in the approach of the management towards the petitioner. It is true that I had not gone into the issue as regards the manner in which enquiry had been conducted considering the fact that the Labour Court had given opportunity to both sides to adduce evidence on the merits of the charges. However, these factors would justify taking a lenient view. It is true that the second charge stands proved, but in view of the aforesaid circumstances I am inclined to take a lenient view. He has been out of service for the past nearly two decades from 24.3.1984 and on the basis of the age given in the affidavit, he may have only four or five years of service. He can be posted in a less sensitive post. Therefore, I am inclined to direct that the petitioner be reinstated in service, but without backwages. Denial of backwages for more than 19 years is a sufficient punishment having regard to the gravity of the proved charge. The petitioner has also not worked in the Bank during the said period and therefore, he cannot also legitimately expect any arrears of salary for the said period. As regards the finding of the Labour Court that the domestic enquiry is invalid, learned counsel for the petitioner contends that the principles of "Relation Back" cannot be invoked and he claims that the petitioner would be entitled to salary from 24.3.1984 to 11.7.199 4, being the date of award. There appears to be conflict of judicial opinion in this context and it is sufficient to refer to the judgment in VISHWESHWARAIA IRON & STEEL LTD. v. ABDUL GANI (1997 (8) S.C. C., 713) in which the Hon'ble Judges had referred the matter to the Constitution Bench. Therefore, at this stage, it is not for this Court to adopt any one of the conflicting views expressed by the Supreme Court. Moreover, as I had already held the proved charge itself is serious enough to deprive the petitioner any claim for backwages from the date of the dismissal, it is not necessary to consider the issue of "relation back". Though the delinquency would justify dismissal, reinstatement is ordered only due to sympathy resulting from the attitude of the management towards the petitioner.

22. In the result, the writ petition is ordered as follows:-
(i) The first charge relating to the use of abusive language and false propoganda is quashed and set aside.
(ii) The finding that the petitioner is guilty of second charge is upheld. The respondents are directed to reinstate the petitioner in service with continuity of service but without back wages. The writ petition is ordered subject to the above terms. No costs.

Index: Yes.
Internet : Yes.
sai/-

To
1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. Pudukotai Central Co-op.
Bank Ltd., represented by
Special Officer,
Pudukottai.